

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11743 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RITESHKUMAR KANTIBHAI MODI THRO GULAM M ABDUL HAMID

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR RC KODEKAR Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2001

ORAL JUDGEMENT

Heard Mr. NM Kapadia, learned advcoate for the petitioner and Mr. RC Kodekar learned AGP for the respondent-State.

In the present petition, the petitioner has

challenged the detention order dated 28.7.2000 passed by the Police Commissioner, City Surat, under Article 226 of the Constitution of India. The respondent-State has not filed any reply against the present petition.

Alongwith the detention order, the grounds of detention has been supplied to the present petitioner under sec. 9(1) of PASA Act. The present petitioner has been detained in custody at District Jail, Jamnagar as Class-II detenu.

Learned advocate Mr. NM Kapadia has submitted that at page 41, the representation has been made by the present petitioner on 13.11.2000 and this representation has not been considered by the respondent-State. On page 45, the acknowledgement has been placed on record by the petitioner about sending of the representation to the concerned authority. Learned advocate Mr. Kapadia has also submitted that offence registered against the present petitioner under the Bombay Prohibition Act and only one offence has been registered on 22.6.2000, except that, no other offence has been registered against the present petitioner. Therefore, in one offence registered against the petitioner of Prohibition Act cannot consider to be disturbed the public order and the same is not entitled the detaining authority to pass the detention order. Learned advocate Mr. Kapadia has also submitted that in the grounds of detention, the detaining authority, in para-2 on page 4, considered the aspects of proceedings under sec. 57 of the Bombay Police Act which shows total non-application of mind inasmuch as even if there was a conviction, no action could have been initiated under sec. 57 of the Bombay Police Act against the petitioner inasmuch as for attracting rigors of section 57 of Bombay Police Act, there should be minimum three convictions under Bombay Prohibition act and there is only one registered case against the petitioner, therefore, Mr. Kapadia has relied upon the decision of this Court reported in 2000(2) GLH, p. 166 in the case of Jayanti Nenumel Ramnani vs. Commissioner of Police, Rajkot.

Learned AGP Mr. Kodekar has submitted that the representation of the present petitioner has been considered by the respondent-State and judgment of this Court reported in 2000(2) GLH p. 166 is not applicable to the facts of the present case and the detaining authority has rightly considered the provisions of section. 57 of the Bombay Police Act.

I have heard the learned advocates appearing on

behalf of the respective parties. The respondent-State has not filed affidavit in reply in spite of the fact that sufficient opportunity has been given to the respondent-State. Therefore, there is nothing on record to show that the representation which has been referred by the petitioner on page 41 has not been considered by the respondent-State and, therefore, not to consider the representation submitted by the petitioner, it amounts to denying the legal right of the petitioner and which violates Article 22(5) of the Constitution of India. There is no material on record produced by the respondent-State which justified the fact that the representation has been considered by the Respondent-State. In absence of such material, there is no option with the Court except to accept the submission of learned advocate of the petitioner.

Contention in respect to sec. 57 of the Bombay Police Act, the view taken by this Court is squarely covered the contention which has been raised by the learned advocate Mr. Kapadia. The relevant observation made by this Court in para-7 is relevant. It has been observed by this Court that taking into consideration rival side contentions, the first aspect that attracts the attention of this Court is the defect in considering the alternative less drastic remedy. In the grounds of detention the authority has stated that resorting into the proceedings under sec. 57(C) is considered by it, but for that purpose at least two convictions are necessary for resorting to that remedy. Whereas in the instant case there is only one case registered against the petitioner which is pending investigation and, therefore, it is not possible to resort to Section 57(C) of the Bombay Police Act. Thereafter, this Court has further observed in para-7.1 as under:

"Apart from this, another factor that requires consideration is that whether consideration proceedings under Section 57(C) of the Bombay Police Act was in fact a genuine consideration of less drastic remedy. Considering Section 57(C) of the Bombay Police Act less drastic remedy was not legally available in the facts of the case and, there was no question of considering it. In fact, what the authority ought to have considered was the possibility of resorting to less drastic remedy which is legally available and can be resorted to. That is not considered by the detaining authority which reflects non-application of mind. IN this regard,

decision in the case of Mava Arjan Parmar v. Commissioner of Police rendered by Division Bench of this Court on 6.11.99 and reported in 1990(1)GLR 481 may be referred to. In that case, the petitioner was detained under section 3 on the ground that he was a bootlegger. The Division Bench held that detention order deserves to be quashed as the detaining authority did not consider the possibility of resorting to less drastic remedy under Section 56 of the Bombay Police Act. The decision was based on an earlier decision of the Division Bench of this Court in the case of Bhupatbhai @ Undardo v. Commissioner of Police, Vadodara, in Special Criminal Application No. 1344 of 1989 decided by Division Bench of this Court on 6.3.1990. In this view of the matter, the order of detention deserves to be quashed."

I have considered the decisions of this Court and also considering the fact that the representation which has been made by the petitioner has not been considered by the respondent-State and it is a case of one offence registered against the present petitioner. That relevant provisions of Section 57(C) of the Bombay Police Act is not available to the detaining authority because it requires at least two convictions and, therefore, according to my opinion, the detention order has been passed by the detaining authority without application of mind and, this detention order is also violated Article 22(5) of the Constitution of India and, therefore, detention order is vitiated.

In the result, the present petition succeeds and the same is allowed. The order of detention dated 28.7.2000 is vitiated and resulted to quash and set aside. The detenu Riteshkumar Kantibhai Modi who has been detained at District Jail, Jamnagar be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H.K. RATHOD, J.)
mandora/